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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

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COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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FEDERAL COMMUNICATIONS COMMISSION
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Dated: May 16, 1996

TELEPORT COMMUNICATIONS GROUP COMMENTS
SUMMARY

TCG, "The *Other* Local Phone Company,"℠ is the nation's largest and most experienced facilities-based competitive carrier. Unlike interexchange carriers, Internet access providers, and others -- companies with substantial business outside of the local exchange market -- TCG brings no agenda to this proceeding other than its need for interconnection arrangements to compete fairly and aggressively for local exchange service customers.

The Commission's role today is entirely different from anything the FCC has faced before. In the past, the FCC developed specific and generic rules for national markets -- its job was to set the terms of conduct. Its role must now change. Congress has expressed a desire that the terms of conduct be established by negotiation. The FCC's role, therefore, must be to produce conditions that will encourage effective bargaining between each CLEC and each ILEC, leading to individual agreements, perhaps for each geographic market, that meet the unique or differing business needs of different competitors. By adopting a vigorous set of "preferred outcomes," the Commission can put in place the conditions for effective bargaining and hence effective facilities based local competition with less regulation.

What, then, are the "preferred outcomes" that will lead to effective negotiated settlements and effective local exchange competition? First, they must be a set of conditions that ensure that any CLEC has a reasonable chance to be a

successful facilities-based local exchange service competitor. Unless the preferred outcomes are sufficiently close to what a facilities-based CLEC needs, the Commission will not have equalized the bargaining positions of the parties, since the ILEC already has all that it needs to be successful but the CLEC does not. The three most important preferred outcomes are:

- o *"Bill and Keep" for Transport and Termination, at least until the ILEC can demonstrate the existence of additional costs associated with terminating a particular CLEC's traffic;*
- o *Mid Span Meet Physical Interconnection for Transport and Termination; and*
- o *Minimum Performance Standards and Penalties for Interconnection, Unbundled Elements, and Transport and Termination.*

By adopting a vigorous set of "preferred outcomes," the Commission can put in place the conditions necessary for effective bargaining as Congress intended, and help ensure that the benefits of true competition become available to American telecommunications consumers. In Appendix A to these comments, TCG provides proposed rules and preferred outcomes that would lead to this result.

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COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits its Comments on the Commission's Notice of Proposed Rulemaking[1] regarding the implementation of the Telecommunications Act of 1996 ("1996 Act").[2]

I. INTRODUCTION.

TCG, "The *Other* Local Phone Company,"℠ is the largest, most experienced, and, perhaps, the only competitive carrier committed solely to the development of local networks that are designed exclusively to provide facilities-based competition to incumbent local exchange carriers ("ILECs") in major markets across the country. Unlike other companies with substantial business outside of the local exchange market -- interexchange carriers, Internet access providers, and others -- TCG brings no agenda to this proceeding other than its need for interconnection

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1. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, released April 19, 1996 ("NPRM").

2. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

arrangements that will permit it to compete fairly and aggressively for local exchange service customers. TCG thus brings a unique perspective to this proceeding, and submits that its Comments should be entitled to greater weight than those of parties whose agendas are mixed, and who may not, in all cases, be seeking to maximize facilities-based local competition, and to reduce regulation, the twin goals of Congress when it passed the 1996 Act.

In considering these local competition issues, the Commission must recognize the substantial degree of dependence that competitors -- the Competitive Local Exchange Carriers ("CLECs") -- will have on the ILECs with which they will compete. Indeed, as the competitive local telecommunications industry has developed, it has, ironically, become even more dependent on the ILEC.[3]

Now, as CAPs and others evolve into CLECs, their degree of dependence on the ILEC has grown exponentially, to a point where virtually every switched call that comes into or leaves a CLEC network is critically dependent on the technical and economic terms for interconnection with the ILEC, and that dependence will only grow as CLEC businesses develop in the future. Because of this permanent

3. For example, when Competitive Access Providers ("CAPs") began, they were private line carriers whose services were largely independent of the ILEC and, because they were private line services, did not necessarily even need to interconnect with the ILEC network. Over time, the advent of collocation arrangements opened up the opportunity for composite private line and special access services to be offered, where limited interconnection with the ILEC was required but the CAP was only dependent on the ILEC for a small portion of the end to end service.

dependence, Congress recognized the need to prevent anticompetitive abuses and the *illusion* of competition by creating specific requirements for ILECs to meet.

TCG has spent the last ten years laying the foundation to be a significant local exchange service competitor. TCG, directly or through its affiliates, already has alternative local networks operating in twenty two metropolitan areas, is authorized to operate as a CLEC in twelve states and has applications for CLEC authority pending in eight more states.[4] In ten years TCG has constructed local fiber optic networks with over 250,000 fiber miles and 5,400 route miles, and serving approximately 4,600 buildings.

That reflects TCG's past. Its future, and the future choices of American telecommunications consumers, will be affected greatly by what the Commission does in this proceeding. And it is extraordinarily important for the Commission to recognize that each competitive carrier has unique interconnection requirements -- TCG's needs are different from the needs of interexchange carriers and they are even different from the needs of other CAPs and CLECs. That is because each geographic market has unique characteristics and each competitive carrier has its own unique strategies, strengths, weaknesses, stage of maturity and business plans which, in turn, establish unique and sometimes radically different

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4. TCG is authorized to operate as a CLEC in California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Washington State, and Wisconsin. TCG has requests for CLEC authority currently pending in Arizona, Indiana, Missouri, Nebraska, New Jersey, Ohio, Oregon, and Utah.

interconnection requirements for each market. For example, the interconnection needs of a facilities-based competitor like TCG will be different in New York versus Omaha, and will bear no resemblance to the interconnection needs of a company that intends to offer local services primarily as a reseller of ILEC services.

The Commission's role today is, therefore, entirely different from anything the FCC has faced before. In the past, the FCC developed specific and generic rules for national markets that parties had to comply with -- its job was to set the terms of conduct. Its role must now change. Congress has expressed a desire that the terms of conduct be established by negotiation. The FCC's role, therefore, is to produce conditions that will encourage effective bargaining between each CLEC and each ILEC, leading to individual agreements that meet the differing business needs of different competitors that are at different stages of development and maturity and that recognize the different characteristics of each local market.

The Commission must therefore adopt rules that respect, permit and encourage the development of scores of different interconnection agreements. By contrast, rules that lead to an averaged, generic, "one size fits all" interconnection arrangement will make the vigorous, sustainable facilities-based local competition sought by Congress impossible. Such a result would entrench the ILEC's dominance, and such agreements will prevent new carriers from competing broadly, thus denying consumers the full benefits of the competitive markets that the 1996 Act was intended to create.

In considering how to implement the 1996 Act, the Commission should be guided by several clear policy choices that Congress made in enacting this statute:

- *A preference for facilities-based local competition, as the only basis for true and sustainable local exchange competition;*[5]
- *A preference for individually negotiated settlements of interconnection matters, or individual arbitrated settlements based on traditional commercial practices;*[6]
- *A preference for different costing standards depending on the nature of the competitor and the nature of the interconnection;*[7] *and*

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5. The 1996 Act makes the existence of a facilities-based competitor an essential prerequisite for RBOC entry into in-region long distance. *See* §271(c)(1)(A).

6. The 1996 Act establishes a first preference for negotiated agreements, allows parties considerable flexibility in negotiating such agreements, and specifically contemplates the idea that there will be several different agreements in a particular jurisdiction with a particular carrier. *See* §§252(a)(1), 252(i).

7. The 1996 Act establishes several different costing standards, ranging from a retail pricing based standard for the typically non-facilities-based reseller, a "cost plus reasonable profit" standard for unbundled elements because alternatives are

o *A preference for less regulatory supervision.*[8]

While the Congressional preference for individually negotiated agreements is clear, it is equally clear that negotiated agreements will not simply happen. As the Commission itself recognizes, there is a gross imbalance in bargaining power between the parties.[9] While the CLECs are and will be critically dependent on the ILECs for many essential elements necessary to provide competitive services, the CLECs have nothing that the ILEC truly wants or really needs, and thus nothing to bargain with.[10] Left to themselves, history demonstrates that the ILECs will offer their "competitors" nothing of value while demanding much in exchange, so that their "competitors" will compete in name only.[11] Nor can it be presumed

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available or could develop, and a "rock bottom" additional cost standard for the exchange of traffic between facilities-based carriers, because there is no alternative to the use of the ILEC network for the completion of calls -- it will be a "perpetual bottleneck." *See* §§252(d)(1),(2) and (3).

8. The 1996 Act preempts inconsistent state requirements while giving the FCC forbearance authority, and establishes interconnection expectations based on industry standards. *See* §§ 253, 261, 401, and 251(c).

9. *See* NPRM at fn 19.

10. While some might claim that the RBOCs "need" CLEC agreements to enter the in-region long distance business under §271 and that gives the CLECs something to bargain with, there is little truth to that. Section 271 only applies to Bell Companies, only requires one such agreement, and includes processes that will allow entry even in the absence of agreements or competitive entry. *See* §§271(c)(1)(A) and (B).

11. Even in these early days of interconnection negotiations, TCG has begun to experience this situation. ILECs are refusing to negotiate unless TCG executes adhesion nondisclosure agreements, barring it from discussing negotiations with

that the ILECs will recognize their obligations under the 1996 Act and carry them out in good faith -- indeed, only days ago Southwestern Bell filed in the Texas courts seeking to strip TCG of its CLEC authority, based on a Texas statute that has been clearly preempted by the 1996 Act.[12] The Commission thus must recognize that, where one party has control of a bottleneck facility that is essential to a competitor, and the competitor has nothing to trade, "negotiations" under such circumstances will be without substance, and "competition" can be nothing but an dangerous illusion -- dangerous because it could lead to the worst of all circumstances for consumers -- an unregulated monopoly.

The FCC is not without guidance on how to encourage real and fair bargaining to encourage real facilities-based local exchange competition. Several State commissions have already developed processes to encourage a negotiated settlement between bottleneck-controlling ILECs and their new, dependent competitors. The FCC -- now compelled by statutory requirements to do the same -- should learn from their experiences.

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the FCC, State regulators, and even its own Board of Directors. Reversing course, one such ILEC said it was prepared to negotiate in good faith without a confidentiality agreement -- only to announce at the first such meeting that it would not discuss any prices without a nondisclosure agreement. The fact that ILECs can unilaterally take such positions confirms the Commission's assumptions about the imbalance in position between the negotiating parties.

12. *See* Plaintiff's Original Petition, filed May 7, 1996, Southwestern Bell Telephone Company v. Public Utility Commission of Texas (No. 96-05327) (District Court of Travis County, Texas) (Attachment A hereto).

The experience of those states shows that, to counterbalance the ILEC's overwhelming bargaining advantages derived from the bottleneck control of essential facilities, the Commission must establish, in advance, a set of basic interconnection entitlements for CLECs. Those basic entitlements should not be firm and fixed rules of conduct like those the FCC adopted in the past -- the new 1996 Act demands new ways of thinking. Rather, these would be a set of (to borrow the California Commission's phrase) "preferred outcomes" that the CLEC would be entitled to in the absence of a negotiated agreement, but would be allowed to "bargain" with for improvements in other preferred outcomes or to negotiate for other issues.

The California Public Utilities Commission created a set of "preferred outcomes" which consisted of explicit interconnection arrangements[13] that would be mandated in the event that negotiations failed; interim bill and keep for reciprocal compensation was one preferred outcome. Under this approach, multiple parties were able to reach individualized agreements with Pacific Bell. And in fact the agreements that were reached did not all follow the literal terms of the preferred outcomes; some CLECs were willing to "bargain" certain preferred

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13. *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service and See Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043 and I-95-04-044, Decision 95-12-056, (December 20, 1995). A copy of Appendix A, the Preferred Outcomes, is provided as Attachment B hereto.

outcomes in exchange for better terms on other issues of more importance to them.

The New York Public Service Commission ("NYPSC") also established a default interconnection standard to be implemented in the event individual negotiations between New York Telephone and its competitors fail.[14] Such an approach ensures that all local exchange carriers are entitled to a certain minimum set of interconnection arrangements, while maintaining the freedom for carriers to negotiate different arrangements if so desired.

What, then, are the "preferred outcomes" that will lead to effective negotiated settlements and effective local exchange competition? First, they must be a set of conditions that ensure that any CLEC has a reasonable chance to be a successful facilities-based local exchange service competitor to the ILEC. Unless the preferred outcomes are sufficiently close to what a facilities-based CLEC needs, the Commission will not have equalized the bargaining positions of the parties, since the ILEC already has all that it needs to be successful but the CLEC does not. The three most important preferred outcomes are:

- ***"Bill and Keep"*** *for Transport and Termination, at least until the ILEC can demonstrate the existence of additional costs associated with terminating a particular CLEC's traffic;*

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14. *Proceeding to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation,* (June 28, 1995). (Attachment C hereto.)

- o ***Mid Span Meet*** *Physical Interconnection for Transport and Termination;*

- o ***Minimum Performance Standards and Penalties*** *for Interconnection, Unbundled Elements, and Transport and Termination.*

This brief list is not, of course, all inclusive. There are many other issues whose details will need to be spelled out in interconnection agreements, and for which the Commission will also need to establish "preferred outcomes." And in certain cases, there will be issues where it will be appropriate for the Commission to operate in the "old style" of declaring what the terms of conduct should be in areas where there can be no negotiation -- matters such as 911 standards, number administration, and other areas where CLECs (and ILECs) cannot be expected to give any ground.

In the Comments that follow, and in the attached Appendix A, TCG spells out the rules that should govern the establishment of these agreements, with minimal regulatory involvement in the negotiation and implementation of the interconnection arrangements agreed to.

II. INTERCONNECTION OBLIGATIONS AND NEGOTIATIONS.

A. States Should Not Be Permitted to Impose on CLECs Obligations That The 1996 Act Imposes Exclusively on ILECs (NPRM ¶ 45).

The Commission asks whether it should prohibit State Commissions from imposing "reciprocal" 1996 Act obligations on CLECs. States should not impose such requirements. The 1996 Act establishes a regulatory framework which recognizes (and attempts to compensate for) the asymmetric market circumstances of ILECs and CLECs. The 1996 Act achieves this in several ways.

First, it imposes a duty on all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.[15] Second, the 1996 Act also imposes duties on ILECs and CLECs to allow resale of their services, to provide number portability, to provide dialing parity, to provide access to rights of way, and to establish reciprocal compensation arrangements.[16] Section 251(b). Finally, the 1996 Act imposes substantial additional duties on ILECs with respect to interconnection, unbundling and resale, and on the Bell Operating Companies in order to enter previously off-limits lines of business.[17] State Commission rules that subject CLECs to all the requirements of ILECs are not "reciprocal" rules but are in fact requirements that contradict the express will of Congress and cannot be accepted.

By requiring all telecommunications carriers (local exchange carriers as well as interexchange carriers) to interconnect with each other, the 1996 Act recognizes the benefits to be derived from an interconnected "network of networks". By imposing asymmetrical duties on LECs, the 1996 Act recognizes that asymmetrical market circumstances demand asymmetrical regulation.

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15. 1996 Act, §251(a).

16. 1996 Act, §251(b).

17. 1996 Act, §§251(c) and 271.

For example, only ILECs have an obligation under the 1996 Act to unbundle their networks. The imposition of an unbundling duty only on ILECs recognizes the fact that mandatory unbundling is in the public interest in so far as it facilitates the disaggregation of the traditional monopoly bottleneck while at the same time recognizing that ubiquitous competitive networks cannot be built overnight, and that mandatory unbundling of new competitive networks is not necessary to afford market access to others. Unlike the ILEC, a CLEC does not have the advantage of constructing its local exchange facilities in an environment in which it has monopoly control over the local exchange market, and there is nothing "essential" about any element of a CLEC's network.

The 1996 Act thus makes the clear distinction between the obligations of CLECs and ILECs. The Commission should make clear that State Commissions cannot, in essence, rewrite the 1996 Act to impose greater burdens on new CLECs than the Congress saw fit to impose.[18] Not only would requirements that CLECs comply with ILEC obligations contradict the will of Congress, but the market risks of imposing superficially "equal" regulations on very unequal competitors is considerable.

To cite but one example, at present TCG Pittsburgh is subject to more detailed regulation than Bell Atlantic. The Pennsylvania Public Utility Commission, for example, has determined that it will regulate all local exchange carriers -- ILECs

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18. *See* Sec. 253(a), (b).

and CLECs -- equally. This means that TCG's operations in Pennsylvania are currently regulated on a rate of return basis and that TCG must prepare and file a petition for alternative regulation in order to obtain relief from this burdensome and counterproductive policy.[19] Bell Atlantic has already filed such a petition and been granted substantial deregulation, leaving TCG Pittsburgh in the unenviable -- and absurd -- position of having to be more highly regulated than the dominant, monopoly carrier in its state. Moreover, the burden of attempting to comply with regulations designed for a monopoly provider of local exchange service has hindered TCG's ability to compete effectively with the ILEC in Pennsylvania, and has increased TCG Pittsburgh's costs and limited its ability to compete with Bell Atlantic. Thus this superficially "equal" and "reciprocal" rule in fact results in a situation that subjects the CLEC to substantially greater costs and denies consumers the full benefits of competition.

Contrary to the Commission's observations, reciprocal obligations will hinder rather than help the negotiation process. As discussed previously, the Commission must at all times strive to equalize the bargaining power between ILECs and CLECs. The imposition of reciprocal obligations will open the door for ILEC abuse

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19. A petition for alternative regulation must be accompanied by a network modernization plan and a request for classification of services as "competitive". In addition, all requests to classify services as "competitive" must be accompanied by cost support and the services themselves must be unbundled. Given the fact that TCG's Pittsburgh operation is a start-up venture and does not possess a monopoly rate base, the requirement to cost-justify rates for services is pointless, and merely imposes added costs and delay to TCG Pittsburgh.

of the process, by allowing ILECs to begin placing unnecessary and excessive interconnection demands on the CLECs in an effort to drain the CLEC's limited resources. To prevent such abuses, and to respect the clearly expressed will of Congress, the Commission must prohibit states from imposing on CLECs the obligations imposed on (and intended for) the ILECs.

B. What are the consequences of establishing uniform, national interconnection rules? What approaches have states taken? (NPRM ¶¶49-52)

TCG agrees with the Commission's tentative conclusion that it should adopt uniform, national interconnection rules to facilitate competitive entry. New entrants are often frustrated by ILEC conduct,[20] and indeed it is debatable whether regulatory complaint processes -- which tend to be relatively formalized and procedural -- are well suited to resolving often technically complex and urgent interconnection disputes.[21] Therefore, the Commission must adopt clear, explicit, national interconnection standards with which every ILEC must adhere to, except

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20. For instance, TCG consummated an interconnection agreement with New York Telephone on June 1, 1994. As of the date of these comments, the arrangement still has not been fully implemented. *See, e.g., Complaint of Teleport Communications Group* filed with the New York Public Service Commission on October 12, 1995. TCG has experienced similar difficulties with Ameritech in Illinois where TCG has spent the past two years attempting to fully implement its interconnection arrangements.

21. TCG filed an FCC complaint against New York Telephone regarding its discriminatory and anticompetitive collocation practices on December 14, 1994, which remains unresolved as of this writing. *See Teleport Communications - New York vs. NYNEX Telephone Companies*, File No. E-95-4.

as permitted by a separately negotiated contract with a CLEC. As discussed in Part II.D, *infra,* the Commission should also incorporate explicit and self-executing remedies for failure to satisfy interconnection obligations.

1. The Use of "Preferred Outcomes" Can Equalize Bargaining Power and Lead to Superior Negotiated Results.

The 1996 Act makes clear a Congressional preference for negotiated agreements, rather than regulatory decisions, as the foundation for new interconnection arrangements. But if the Commission is to achieve that result, it must take steps to ensure that the negotiations hold the promise of reaching effective conclusions. It is undeniable that, at the outset, the ILEC holds all the cards, and all the advantages, in the negotiating process. The Commission itself has recognized that the ILECs have "vastly superior bargaining power in negotiations for mutual termination."[22] Under such circumstances, for the negotiations to be successful, and for the CLECs to have a reasonable opportunity of obtaining an interconnection agreement that will be financially and technically satisfactory, the Commission must establish ground rules to equalize the bargaining process.

TCG submits that the experience of the states demonstrates that a CLEC can obtain some negotiating leverage to partly counterbalance the ILEC's overwhelming advantages if regulators establish, in advance, a set of basic interconnection entitlements for the CLEC. Those basic entitlements then give the

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22. *See* NPRM at fn. 19.

CLEC something with which to bargain. Coupled with the adoption of appropriate arbitration standards, as described in Part IX, *infra*, the Commission can put in place a regime that will, as Congress intended, produce a workable competitive, facilities-based market through negotiated agreements, while requiring less intervention from state or federal regulators.

California adopted a set of "preferred outcomes" which served to stimulate meaningful negotiations between ILECs and CLECs.[23] The "preferred outcomes" consisted of a set of explicit interconnection arrangements -- for example, interim bill and keep for reciprocal compensation was one preferred outcome -- that the Commission indicated would be mandated in the event that negotiations failed. Under this approach, multiple parties were able to reach individualized agreements with Pacific Bell. And in fact the agreements that were reached did not all follow the literal terms of the preferred outcomes; some CLECs were willing to "bargain" certain "preferred outcomes" in exchange for better terms on other issues that were uniquely important to them.

The New York Public Service Commission established a default interconnection standard to be implemented in the event individual negotiations between New York Telephone and its competitors fail.[24] Such an approach

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23. California Public Utilities Commission Order. Decision No. 95-12-056, (December 20, 1995), Dkt. Nos. R.95-04-043 and I.95-04-044.

24. New York Public Service Commission, *Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation*, (Sept. 27, 1995), Case No. 94-C-0095. While TCG does not believe that the NYPSC's

ensures that all local exchange carriers are entitled to a certain minimum set of interconnection arrangements, while maintaining the freedom for carriers to negotiate different arrangements if so desired.

Unfortunately, many of the states which have addressed CLEC-ILEC interconnection issues have adopted relatively vague standards for interconnection. While these standards generally affirm the obligation of all parties to interconnect, they leave too many of the details to be negotiated between LECs. It has been TCG's experience that such an approach perpetuates the ILECs dominance and permits the ILEC to approach the negotiations with a "take it or leave it" attitude, since the Commission has provided little guidance and the ILEC's bargaining leverage is immense and intact. Those instances in which more definitive expectations have been specified have generally led to more satisfactory and less regulatory results. The Commission should similarly strive to equalize bargaining power by prescribing its own "preferred outcomes" so that parties can negotiate fairly among themselves.

2. Explicit Standards are Necessary to Prevent ILEC Abuses

TCG's own experience at the State and Federal Commission levels demonstrates that the ILECs have succeeded in stalling the entry of CLECs by failing to implement efficient interconnection arrangements in a timely manner. At the FCC, the ILECs have successfully frustrated the FCC's efforts to implement

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proposed rates for interconnection satisfy §252(d)(2) of the 1996 Act, the process used in the Order represents a useful reference for the Commission to consider.

collocation arrangements, and years after the tariffs were filed the FCC has still not resolved many important issues that were set for investigation, leaving in place tariffs and operating arrangements that are grossly overpriced and anticompetitive.[25] This creates only the dangerous illusion of greater competition.

The experience is little better at the State level. For two years TCG has attempted to obtain the interconnection arrangements necessary for the provision of the full range of local exchange services in New York. These include technical and billing arrangements necessary for the provision of 911 and E911 services, equal access to interexchange carriers through a meet-point billing arrangement, Information and Mass Announcement Services, 800 services, and ISDN services. While some progress has been made on some issues, basic agreement on all necessary issues is still to come -- and even where agreements are theoretically in place NYNEX's systematically poor performance erodes the effectiveness of the agreement.[26]

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25. *See, e.g., Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection for Special Access*; Order Designating Issues for Investigation, 8 FCC Rcd 6909 (1993) (Special Access Physical Collocation Designation Order); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Phase II,* Order Designating Issues for Investigation, 10 FCC Rcd 11116 (1995) (Virtual Collocation Designation Order).

26. TCG has experienced similar problems in Boston. TCG signed an Interconnection Agreement with New England Telephone on May 1, 1995. To date, this agreement has not yet been implemented.

Similarly, US West was successful in stalling TCG's entry into the Washington State local exchange market for about two years. TCG was certificated to provide local exchange services on May 25, 1994.[27] Shortly thereafter, TCG approached US West to negotiate an interconnection agreement. After several months of negotiations in which US West refused to modify its inherently unfair switched access proposal -- a proposal which the Washington UTC later soundly rejected -- TCG was left with no option but to begin a time-consuming and costly complaint proceeding. The Washington Commission issued an order in this proceeding on October 31, 1995, mandating interconnection.[28] US West, however, continued to file unacceptable interconnection tariffs, thereby forcing the Commission to issue several subsequent orders mandating compliance.[29] Thus, TCG was only able to utilize its LEC certificate twenty-one months after it was granted.

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27. Washington Utilities and Transportation Commission, Dkt. No. UT-940529.

28. Washington Utilities and Transportation Commission, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part,* (October 31, 1995), Dkt. No. UT-941464. (Attachment D hereto.)

29. In later rejecting US West's co-carrier interconnection tariff, the Washington Commission stated, "US West's disdainful response to the other parties' comments and its insistence on writing the tariff to reflect positions it unsuccessfully advocated on the merits cause the Commission to conclude that the company is unlikely to file an acceptable tariff for local interconnection within a reasonable period of time unless the Commission is fairly prescriptive in this order." *Ninth Supplemental Order Rejecting Tariff Filings*, (March 13, 1996), Dkt. No. UT-941464.